

IN THE UNITED STATES DISTRCIT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DEIRDRE L. BOSTICK,

Plaintiff,

v.

CABARRUS COUNTY DEPT. OF
HEALTH AND HUMAN SERVICES,

Defendant.

REPLY BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS
FOR FAILURE TO PROSECUTE

Case No. 1:18CV1042

Defendant Cabarrus County, North Carolina, pursuant to Rule 7.2 of the Middle District of North Carolina Local Rules, files this Reply Brief in Support of Defendant's Motion to Dismiss for Failure to Prosecute.

The Plaintiff's handwritten Response to Cabarrus County's Motion to Dismiss, ECF No. 18, does not dispute any of the facts described in the Motion to Dismiss, nor does it provide adequate explanation for her failure to prosecute the case. Cabarrus County is sympathetic towards Ms. Bostick's recent medical problems, but they do not excuse her failure to take even the most basic actions to prosecute the case she initiated. As such, the Court should grant Defendant's Motion to Dismiss for Failure to Prosecute.

First, the Plaintiff does not dispute that she has failed to pay the applicable filing fee in accordance with Judge Peake's order (ECF. No. 3). *See* ECF No. 18, p. 2. Rather, she explains that she cannot afford to make the ordered \$50 payment towards the remaining \$350 she still owes for the filing fee. Instead of informing the Court of her inability to pay the fee and seeking alternative arrangements, Ms. Bostick knowingly ignored the

Court's order. Further, Ms. Bostick's claim that she cannot afford the \$50 filing fee payment is unconvincing since she managed to afford sending her response via USPS Express Mail to both counsel for the Defendant, as well as the Court, costing over \$80 in postage. In its order, the Court thought it proper for the Plaintiff to ask herself, "Is the merit of the claim worth the cost of pursuing it?" The Plaintiff has effectively answered "no". As such, the Court should not indulge the Plaintiff further at Cabarrus County's expense.

Second, Ms. Bostick failed to adequately explain why she failed to appear for the Initial Pretrial Conference on April 25, 2019. Ms. Bostick claims she skipped the Conference because she lives in Florida. *See* ECF No. 18, p. 2. Ms. Bostick's choice to move to Florida after filing her suit does not excuse her from appearing for necessary hearings. If this case is allowed to proceed, Cabarrus County will have to bear the burden of preparing for a trial that Ms. Bostick seems unlikely to travel from Florida to attend.

Last, the Plaintiff attempts to explain her failure to prosecute the case as resulting from her recent medical diagnosis. While the medical records she submitted demonstrate the seriousness of her condition in March and April 2021, they do not explain why the Plaintiff failed to abide by the Court's orders and prosecute the case in 2020. They also do not adequately explain why the Plaintiff failed to make any effort in the case in 2021. It was not until the Defendant served its Motion to Dismiss at the Plaintiff's current residence, in addition to her address on record with the Clerk, that the Defendant made any effort to pursue this case.

In sum, the fourth *Chandler* factor asks the Court to consider “the existence of a sanction less drastic than dismissal. *Black Water Marine Explorer LLC v. Unidentified Shipwrecked Vessel or Vessels*, 714 F. App'x 296, 297 (4th Cir. 2018) (quoting *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982)) (internal quotation marks omitted). The Plaintiff’s sparse and generally irrelevant response shows that the threat of dismissal was not enough for her to start seriously pursuing her claim. As such, the only appropriate sanction remaining is dismissal with prejudice.

For these reasons, Defendant Cabarrus County, North Carolina maintains its request that this action be dismissed with prejudice pursuant to F. R. Civ. P. 41(b).

Respectfully submitted, this the 12th day of November, 2021.

/s/ David B. Goldberg
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CERTIFICATE OF SERVICE

Case No. 1:18CV1042

I hereby certify that on November 12, 2021, I electronically filed the forgoing REPLY BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO PROSECUTE with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all registered users. I also certify that a paper copy has been mailed to the plaintiff on this date at the following addresses:

Deirdre L. Bostick
5867 Hampton Hills Blvd
Tamarac, Fl 33321-4181

This the 12th day of November, 2021.

/s/ David B. Goldberg
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CERTIFICATE OF WORD COUNT

This is to certify that the foregoing brief contains fewer than 3,125 words, after excluding the caption, signature lines, and certificate of service. Therefore, the foregoing brief complies with the length limitations set by Local Rule 7.3(d)(1). The basis for this certification is the word count feature of the word processing software used to prepare this brief.

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